HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21704 of 2006

Dated:17.11.2006

Between:

Zainab Bee.

…Petitioner

and

Central Power Distribution Company of A.P.Limited and others.

…Respondents

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21704 of 2006

ORDER:

The petitioner filed instant Writ Petition assailing the Provisional Assessment Order dated 30.08.2006 issued by the first respondent and also the order dated 25.09.2006 passed by the second respondent. She prays for a writ of mandamus declaring the two impugned notices as illegal and arbitrary.

The petitioner is a resident of H.No.16-5-35/1, Farhathnagar, Hyderabad. The said property was purchased by her husband, Late Khaja Moinuddin, in 1974. The electricity service connection bearing S.C.No.R3-1563 is installed in the said premises. On 08.08.2006, the third respondent inspected the petitioner's premises and found the meter box seal tampered, besides other incriminating factors. Therefore, the third respondent provisionally came to the conclusion that the petitioner is dishonestly using electricity, that she is guilty of theft under Section 135 of the Electricity Act, 2003 (for short 'the Act'), and accordingly, she was asked to pay a sum of Rs.1,10,286/- towards provisional assessment charges pending civil liability before the Special Court under Section 154 of the Act. The said provisional assessment notice/order was issued to one Mirza Aziz Ali, 16-5-35/1, Farhath Nagar, Hyderabad. Be that as it is, after receiving the

provisional assessment order, the petitioner submitted representation before the second respondent requesting to permit her to pay 50% of the provisional assessment amount of Rs.55,143/- in five equal monthly installments. Considering the same, the second respondent passed orders permitting the petitioner to pay the amount in three installments of Rs.36,762/- each on 27.09.2006, 27.10.2006 and 27.11.2006. Aggrieved by these, the petitioner is before this Court.

Learned Counsel for the petitioner at the outset contends that the provisional assessment order was issued in the name of Mirza Aziz Ali who is not even the vendor to the petitioner's husband. Secondly, he denies the allegation of tampering the meter seal box or theft of energy. Thirdly, he contends that when the petitioner approached the second respondent for permission to pay 50% of the provisionally assessed charges, without application of mind, the second respondent permitted to pay the entire amount in installments.

At the stage of admission itself, the third respondent filed a counter affidavit. The allegation that the provisional assessment order or the order of the second respondent are addressed to one Mirza Aziz Ali is not denied. It is very curious, when the petitioner herself approached the second respondent after receiving the provisional assessment order, the second respondent still addressed the communication to Mirza Aziz Ali. Further, it is the case of the third respondent that from 1995 onwards the service connection in premises No.16-5-35/1 stands in the name of Mirza Aziz Ali, that every month whenever the bill is raised for electricity charges, the petitioner is paying the amount without demur, and therefore, she cannot now turn down and plead ignorance about the service connection. The justification for issuing the provisional assessment order is also adverted to, a reference to which is not necessary; in view of the order proposed.

After giving consideration to the factual matrix, it becomes clear whether provisional assessment order is validly issued in the name of Mirza Aziz Ali or not, third respondent inspected service bearing R3-1563/ Category-I at Door No.16-5-35/1. This property is claimed by the petitioner as the house purchased by her husband under registered sale deed dated 29.03.1974 from Sri Aijaz Ali, S/o.Mushtaq Hussain. Therefore, it is quite probable that the petitioner or her husband continued to avail service bearing No.R3-1563 which stood in the name of Mirza Aziz Ali. Presumably, for this reason, the petitioner's

Counsel does not seriously dispute this. His submission, however, is about the way the second respondent passed order ignoring the request of the petitioner. The petitioner wanted to pay 50% of the provisionally assessed charges in installments. The second respondent should consider this once again. This order shall not, however, preclude the competent authority to initiate appropriate action before the Special Court for the civil liability. The submission of the learned Counsel for the petitioner that the petitioner has paid sum of Rs.10,000/- to the third respondent is recorded.

The Writ Petition is disposed of with the directions to the second respondent as above. No costs.

_____

(V.V.S.RAO, J)

17.11.2006
vs